

ENTERED

January 16, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

RANDALL BOLIVAR,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:18-CV-139

ORDER

In January 2014, a Texas state-court jury found Petitioner Randall Bolivar guilty of murder. He was sentenced to 45 years of incarceration. After exhausting his appellate rights in Texas state courts, he filed this action under 28 U.S.C. § 2254.

On August 14, 2019, Bolivar filed his Amended Petition for Writ of Habeas Corpus (Doc. 108).¹ Within his Amended Petition, Petitioner alleges five grounds in support of his action: (1) he was denied his constitutional right to testify on his own behalf when his counsel refused to call him as a witness, despite telling her that he wished to testify; (2) the senior judge who presided over his trial did not take an oath before trial, disqualifying him from rendering judgment; (3) when he filed his motion for a new trial, he was denied counsel, an evidentiary hearing, and a complete and timely record of the trial; (4) he was denied his right to counsel at the time of his arrest; and, (5) the state trial court issued unconstitutional jury instructions. (Amended Petition, Doc. 108)

In September 2019, Respondent moved for summary judgment. (Respondent's Motion for Summary Judgment, Doc. 114) Petitioner did not file a response.

On October 23, 2019, the Magistrate Judge issued a Report and Recommendation (Doc. 115) recommending that the Court grant the Motion for Summary Judgment and deny

¹ The Report and Recommendation of the Magistrate Judge (Doc. 115) summarizes the relevant procedural and factual background.

Petitioner's Petition for Writ of Habeas Corpus. Petitioner timely filed objections to the Report and Recommendation. (Objections, Doc. 118)

The Court has conducted a *de novo* review of the Motion for Summary Judgment, the briefing of the parties, the record in this case, and the applicable law. In his objections, Petitioner challenges only portions of the Report and Recommendation, disagreeing with the application of the law. The Report and Recommendation ably and correctly addresses Petitioner's arguments.

Accordingly, the Court **ADOPTS** the Report and Recommendation. It is:

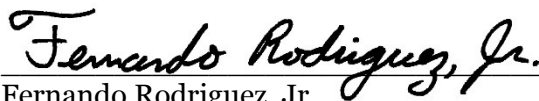
ORDERED that Respondent Lorie Davis's Motion for Summary Judgment (Doc. 114) is **GRANTED**; and

ORDERED that Petitioner Randall Bolivar's Amended Petition for Writ of Habeas Corpus (Doc. 108) is **DENIED**.

After reviewing Bolivar's Petition for Writ of Habeas Corpus and the applicable Fifth Circuit precedent, the Court finds that no outstanding issue would be debatable among jurists of reason, and that Bolivar fails to make a "substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Accordingly, the Court **DENIES** the request for a Certificate of Appealability.

The Clerk of Court is directed to close this matter.

SIGNED this 16th day of January, 2020.



Fernando Rodriguez, Jr.
United States District Judge